IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

CIVIL REVISION APPLICATION NO.182 OF 2007

Shri Krishnaji Janardhan Bhole
(since deceased) & Ors. : Applicants
(Orig.Plaintiffs)

V/s.

Smt.Sushila Vishnu Joshi
(since deceased) & Ors. : Respondents
(Orig.Defendants)

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Mr.N.V.Mhatre for the applicants.

Mr.Rajesh B. Parab for respondent nos.2 to 4.

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CORAM : S.A.BOBDE, J.

DATE : JULY 02, 2007.

P.C.

1. This Civil Revision Application is preferred against the judgement and order dated 30.6.2004 passed by the learned 2nd Jt. Civil Judge, Junior Division, Kalyan, in Misc. Application no.83 of 1991. By the impugned judgement, the learned Civil Judge has set aside the ex parte decree passed in Regular Civil Suit no.320 of 1990 on 18.9.1991. The Court has thereby restored the suit. This suit has been filed by the applicants against the

respondents and had been decreed under Order VIII Rule 10 of the C.P.C. Against the said decree, the respondents had filed an application under Order IX Rule 13 which has been allowed by the Court below.

2. The learned counsel for the applicants relied on the judgement of a Division Bench of this Court in Dhanwantrai v. Satish (1998 (3) Mh.L.J. 924). The Division Bench of this Court has held that an application under Order IX Rule 13 is not tenable when the Court has passed a decree under Order VIII Rule 5 or 10 of the C.P.C. Admittedly, this suit was decreed under Order VIII Rule 10 of the C.P.C. Hence, the respondents could not have approached the learned trial Court for setting aside the decree under Order IX Rule 13.

3. In this view of the matter, the revision application is allowed. The impugned order is set aside. The respondents are at liberty to take such steps as may be advised, in accordance with law.

S.A. BOBDE, J.